

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HELENA GUERGIS

Plaintiff
(Appellant)

- and -

V. RAYMOND NOVAK, ARTHUR HAMILTON,
CASSELS BROCK & BLACKWELL LLP,
THE RIGHT HONOURABLE STEPHEN HARPER,
GUY GIORNO, SHELLY GLOVER,
THE HONOURABLE LISA RAITT, AXELLE PELLERIN,
CONSERVATIVE PARTY OF CANADA and
DERRICK SNOWDY

Defendants
(Respondents)

NOTICE OF APPEAL

THE APPELLANT (PLAINTIFF) APPEALS to the Court of Appeal from the Order of the Honourable Justice Hackland, dated August 24, 2012, made at Ottawa.

THE APPELLANT ASKS that the Order dismissing the Appellant's action as against the Respondent The Right Honourable Stephen Harper ("the Prime Minister") and the Respondents V. Raymond Novak ("Novak"), Guy Giorno ("Giorno"), Shelly Glover ("Glover"), Lisa Raitt ("Raitt"), Axelle Pellerin ("Pellerin") and Conservative Party of Canada, and striking the Statement of Claim

as against all of the Respondents (other than the Defendant Snowdy) be set aside, and that the Respondents' motions be dismissed.

THE GROUNDS OF THIS APPEAL are as follows:

1. The Learned Motions Judge erred in dismissing the Appellant's action as against Respondent Prime Minister and the Respondents Novak, Giorno, Glover, Raitt, Pellerin and Conservative Party of Canada.
2. The Learned Motions Judge erred in striking the Statement of Claim as against all of the Respondents (other than the Defendant Snowdy who was not a party to the motions).
3. The Learned Motions Judge erred in granting relief to the Respondents in respect of the motions heard and decided by the Learned Motions Judge, despite the Respondents' failure to show that is plain, obvious and beyond doubt that the Appellant's Statement of Claim does not disclose a reasonable cause of action and that the Appellant could not possibly succeed on the claims set out in the Statement of Claim.
4. The Learned Motions Judge erred in holding, in effect, that the Appellant's Statement of Claim does not disclose a reasonable cause of action, notwithstanding that the Statement of Claim does disclose reasonable causes of action.
5. The Learned Motions Judge erred in not accepting the truth of facts set out in the Statement of Claim.
6. In the alternative, the Learned Motions Judge erred in not granting the Appellant leave to amend the Statement of Claim in respect of the Appellant's claims against the Respondent Prime Minister and the Respondents Novak, Giorno, Glover, Raitt, Pellerin and Conservative Party of Canada.

7. The Learned Motions Judge erred in failing to consider that striking out the Statement of Claim as against all of the Respondents (other than the Defendant Snowdy), without leave to amend (except as against the Respondents Arthur Hamilton and Cassels Brock & Blackwell LLP), is a drastic and exceptional remedy, rarely granted by the Superior Court of Justice.

Defamation and the Absolute Privilege Defence

8. The Learned Motions Judge erred in finding that the April 9, 2010 letters written by the Respondent Novak to the RCMP Commissioner and by the Respondent Giorno to the Ethics Commissioner, are neither defamatory on their face nor reasonably capable of bearing the implications of criminal activity suggested in the Statement of Claim.
9. The Learned Motions Judge erred in finding that the Respondent Prime Minister's statement of April 9, 2010, as quoted in the Statement of Claim, is neither defamatory on its face nor reasonably capable of bearing the implications of criminal activity suggested in the Statement of Claim.
10. The Learned Motions Judge erred in failing to consider the Appellant's allegations, as pleaded in the alternative, that the allegations of criminal activity on the part of the Appellant were never communicated by the Respondent Snowdy to the Respondent Hamilton, and that therefore, those allegations originated with the Respondent Prime Minister or Respondents Hamilton, Novak or Giorno.
11. The Learned Motions Judge erred in finding that it is plain and obvious that the Respondent Glover's statements cannot reasonably bear the implications pleaded (i.e. that the Appellant had been or was involved in criminal conduct and that reliable evidence would be made available in the future, confirming that the Appellant had been involved in such conduct).
12. The Learned Motions Judge erred in finding that the alleged defamatory statements made in conversations between the Respondent Prime Minister and the Respondents Novak and

Giorno, fall squarely within absolute privilege accorded to officers of state and their senior advisors when communicating on matters within their official duties.

13. The Learned Motions Judge erred in failing to find that the alleged defamatory statements made by the Respondents Novak, Giorno and Pellerin were not statements made by high officers of state.
14. The Learned Motions Judge erred in failing to find that the alleged defamatory statements made in conversations between the Respondent Prime Minister and his senior advisors were not communications made by officers of state acting in the course of their official duties.
15. The Learned Motions Judge erred in finding that the subject of the communications referenced in the Statement of Claim was the suspected improper conduct of a cabinet minister, when the Respondents never had any suspicion that the Appellant was engaged in the criminal conduct alleged by the Respondents.
16. The Learned Motions Judge erred in finding that the alleged defamatory statements made by the Respondent Raitt are protected by absolute privilege.
17. The Learned Motions Judge erred in finding that the alleged defamatory statements made by the Respondent Raitt were made to senior officials in the office of the Respondent Prime Minister, in the absence of any allegation or suggestion in the Statement of Claim that would support such a finding.
18. The Learned Motions Judge erred in finding that on the facts as pleaded, the alleged defamatory statements made by the Respondent Pellerin are protected by absolute privilege.
19. The Learned Motions Judge erred in failing to consider that the Respondent Pellerin was not a high officer of state at the time that she made the alleged defamatory statements described in the Statement of Claim.

20. The Learned Motions Judge erred in finding that the alleged defamatory statements made by the Respondent Pellerin were made pursuant to her working at the direction of a Minister of the Crown, in the absence of any allegation or suggestion in the Statement of Claim that would support such a finding.
21. The Learned Motions Judge erred in finding that the alleged defamatory statements made by the Respondent Pellerin were made by her within the scope of her duties as a federal public servant, in the absence of any allegation or suggestion in the Statement of Claim that would support such a finding.
22. The Learned Motions Judge erred in finding that it was in the ordinary course of affairs for the Respondent Pellerin to report to the Respondent Giorno, criminal conduct allegedly engaged in by the Appellant, in the absence of any allegation or suggestion in the Statement of Claim that would support such a finding.
23. The Learned Motions Judge erred in finding that the claims of conspiracy, negligence and intentional infliction of mental suffering advanced against the Respondent Pellerin are “dressed up” defamation claims, inserted in the Statement of Claim for the purpose of avoiding the application of the absolute privilege defence.

Misfeasance in Public Office

24. The Learned Motions Judge erred in finding that the letters to the RCMP Commissioner and the Conflict of Interest and Ethics Commissioner are not defamatory and are the subject of an absolute privilege, such that sending the letter cannot constitute misfeasance in public office on the part of the Respondent Prime Minister or the Respondents Giorno and Novak.
25. The Learned Motions Judge erred in failing to consider that the sending of the letters to the RCMP Commissioner and the Conflict of Interest and Ethics Commissioner in bad faith, maliciously and/or for an illegitimate purpose was an abuse of the power of the Respondent Prime Minister and the Respondents Novak and Giorno as public officeholders.

26. The Learned Trial Judge erred in failing to consider that the actions of the Respondent Prime Minister and the Respondents Novak and Giorno in using their public offices to prepare and send the letters to the RCMP Commissioner and the Conflict of Interest and Ethics Commissioner were independently actionable wrongs that stand apart from the defamatory content of those letters.

Conspiracy

27. The Learned Motions Judge erred in characterizing the Appellant's position as contending that the Prime Minister and his senior advisors can be called into court to explain and justify the Prime Minister's removal of the Appellant from the federal cabinet because her removal was part of a conspiracy or motivated by improper, tortious intentions.
28. The Learned Motions Judge erred in failing to consider the Appellant's allegation that the objects of the conspiracy by the Respondents included engaging in unlawful acts in order to justify the removal of the Appellant from her positions in a manner deemed by the Respondents to be to their political, personal, and/or financial benefit.
29. The Learned Motions Judge erred in finding that the subject of the alleged conspiracy was conduct protected by the doctrine of Crown prerogative and is, therefore, beyond the jurisdiction of the Court.

Crown Prerogative

30. The Learned Motions Judge erred in failing to consider that Crown prerogative does not insulate the Respondent Prime Minister and the Respondents Novak and Giorno from tortious conduct, including defamation, when the otherwise lawful removal of the Appellant from cabinet and her other positions was achieved through tortious means, including the making of defamatory statements in order to justify that removal.
31. The Learned Motions Judge erred in finding that one of the issues to be decided by him was whether or not the Respondent Prime Minister's actions, in removing the Appellant from

cabinet and from caucus, are subject to review by the courts, despite that issue not being raised in the Statement of Claim.

32. The Learned Motions Judge erred in failing to properly apply the relevant “plain and obvious” test in considering whether or not the Respondent Prime Minister’s tortious conduct directed toward the Appellant was protected by Crown prerogative.
33. The Learned Motions Judge erred in finding that the Superior Court of Justice does not have the jurisdiction to review the Appellant’s allegations of tortious conduct in relation to the Prime Minister’s actions.
34. The Learned Motions Judge erred in finding that the Appellant’s contentions, if sustained, would render Crown prerogative meaningless.
35. The Learned Motions Judge erred in finding that that the Appellant’s contentions, if sustained, would require the Respondent Prime Minister to answer, in court, for the political decisions he makes as to the membership of his cabinet.
36. The Learned Motions Judge erred in characterizing the Statement of Claim as having alleged that the Respondent Prime Minister’s actions were taken on the advice of the Respondents Novak and Giorno, and that therefore, the conduct of the Respondents Novak and Giorno must also be protected by Crown prerogative.

Parliamentary Privilege

37. The Learned Motions Judge erred in finding that it is plain and obvious that the Appellant’s tort claims are beyond the jurisdiction of the Superior Court of Justice because of the application of the constitutional doctrine of parliamentary privilege.
38. The Learned Motions Judge erred in finding that the Respondent Prime Minister’s tortious conduct was purely political decision-making.

39. The Learned Motions Judge erred in failing to consider that the Respondent Prime Minister's tortious conduct directed toward the Appellant were not instances of the Respondent Prime Minister carrying out functions that were necessary to the discharge of his legislative responsibility.
40. The Learned Motions Judge erred in failing to properly apply the relevant "plain and obvious" test in considering whether or not the conduct alleged by the Appellant to have been engaged in by the Respondent Prime Minister fell within the scope of parliamentary privilege.
41. The Learned Motions Judge erred in characterizing the Statement of Claim as having included allegations that the Appellant was subject to expulsion, disqualification from caucus or other disciplinary matters pertaining to Members of Parliament.
42. The Learned Motions Judge erred in characterizing the Appellant's position as suggesting that the Respondent Prime Minister and his senior officials can be called to account, in a proceeding in the Superior Court of Justice, for the exercise of the Prime Minister's powers to control his parliamentary caucus.

Abuse of Process

43. The Learned Motions Judge erred in finding that the Appellant was seeking to re-litigate the Canada Human Rights Commission ("CHRC")'s determination on the issue of Crown prerogative and parliamentary privilege.
44. The Learned Motions Judge erred in finding that the the jurisdictional issues dealt with by the CHRC, as far as they relate to Crown prerogative and parliamentary privilege, were identical to the issues raised before the Learned Motions Judge.
45. The Learned Motions Judge erred in failing to consider that the Appellant's complaints to the CHRC were based upon discrimination on the grounds of marital status, family status and

sex, and were not based upon the pleaded causes of action and facts set out in the Statement of Claim.

46. The Learned Motions Judge erred in finding that the issue of whether the Prime Minister's actions, in removing the Appellant from cabinet and from caucus, had been decided and created an issue estoppel.
47. The Learned Motions Judge erred in holding that it was an abuse of process for the Appellant to seek to have the CHRC's determinations on the issue of Crown prerogative and parliamentary privilege re-litigated.
48. The Learned Motions Judge erred in holding that the ruling of the CHRC, although dealing with the CHRC's jurisdiction, was decided on general principles applicable to Crown prerogative and parliamentary privilege and apply equally to the Superior Court of Justice.

The Conservative Party of Canada's Capacity to be Sued

49. The Learned Motions Judge erred in finding that it is plain and obvious that the Respondent Conservative Party of Canada cannot be sued in tort, and lacks the status to be sued.
50. The Learned Motions Judge failed to consider the recent judicial authority establishing that the Respondent Conservative Party of Canada has been the subject of recent judicial proceedings in the Superior Court of Justice whereby declaratory relief was granted and costs were awarded against the Respondent Conservative Party of Canada.

The Claim Against Arthur Hamilton and Cassels Brock & Blackwell LLP

51. The Learned Motions Judge erred in striking out the Appellant's claims against the Respondents Arthur Hamilton and Cassels Brock & Blackwell LLP, without providing any reasons or justification for doing so.

Other Grounds of Appeal

52. The interests of justice.
53. Such further and other grounds as counsel may advise and the Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 6.(1)(b) of the *Courts of Justice Act*.
2. The Order appealed from is final.
3. The Order appealed from dismisses a claim of more than \$50,000.00.
4. Leave to appeal is not required.

September 24, 2012

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

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